

APPEAL NO. 032753
FILED DECEMBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 18, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through fourth quarters.

The claimant appeals, contending that the treating doctor's reports specifically explain why he was unable to work during the qualifying periods; that in addition to cervical surgery, he has lumbar disc herniations; that he takes medication that causes side effects; and that he did enroll with the Texas Rehabilitation Commission (TRC) but did not qualify due to his physical restrictions. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant appeals the hearing officer's determinations that he had not made a good faith effort to obtain employment commensurate with his ability to work, asserting that he had a total inability to work in any capacity as assessed by his treating doctor.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The claimant relies on two reports (one of which was excluded as not having been timely exchanged) from the treating doctor to provide the narrative from a doctor which specifically explains how the injury causes a total inability to work. In a report dated June 3, 2003 (seven weeks after the end of the fourth quarter qualifying period), the doctor discusses the claimant's October 2000 cervical spine surgery, "a herniated nucleus pulposus at L4-L5, L5-S1" and concludes that in his opinion the claimant "continues to be unable to work since his injury of _____, through present: 06/03/03, or until his injuries are well healed." In addition, there is a check off form dated June 17, 2003, completed by the treating doctor for the TRC where the doctor checked off that the claimant did not have a medical release for employment and that the claimant had no ability to do anything. The hearing officer found that the claimant did not provide a narrative report from a doctor which specifically explained how the claimant's injury caused a total inability to work during the qualifying periods. That determination is supported by the evidence as neither of the reports had a narrative

which specifically explains how the compensable injury causes a total inability to work pursuant to Rule 130.102(d)(4).

The claimant also contends that he did enroll with the TRC but did not qualify because of his restrictions. The claimant did contact the TRC on May 13, 2003, approximately a month after the end of the fourth quarter qualifying period, and by letter dated July 22, 2003, the TRC replied that the claimant "is not ready for our services at this time as per doctor's report." The hearing officer found that the claimant did not meet the requirement of Rule 130.102(d)(2), enrollment and satisfactory participation in a TRC program during any of the qualifying periods.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ACE USA/OR** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE, EAST, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge